



C.R.P.No.716 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

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1. R.Susila, Proprietrix,
Suriya Fertilizers,
22, Brethapet Road,
Vepery, Chennai-600 007.

2. M/s.Vijaya Kumar & Co.,
Rep.by its Managing Partner,
72, Govindappa Naicken Street,
Chennai-600 001.

... Petitioners

Vs.

1. S.Kantilal
2. S.Tejraj
3. S.Babulal
4. S.Jayantilal
5. S.Kishore Kumar

... Respondents

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, against the order dated 21.12.2012 passed in R.C.A.No.394 of 2003 by the learned VII



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Judge, Court of Small Causes, Chennai, confirmed in order dated 06.02.2003 passed in R.C.O.P.No.850 of 1996 by the learned XVI Judge, Court of Small Causes, Chennai.

For Petitioners : Mr.K.G.Vasudevan

For Respondents : Mr.A.K.Raghavalu

ORDER

The original papers had been lost by the Registry. Therefore, the typed set of papers had been received from Mr.A.K.Raghavalu, the learned counsel appearing for the respondents and the Civil Revision Petition papers are reconstructed.

2. This Civil Revision Petition arises against the concurrent finding of eviction in R.C.O.P.No.850 of 1996 dated 06.02.2003 on the file of the XVI Court of Small Causes, Chennai, as confirmed in R.C.A.No.394 of 2003 dated 21.12.2012 on the file of the VII Court of Small Causes, Chennai.



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3. The jural relationship between the petitioners and the respondents is not in dispute. The petitioner in R.C.O.P., Mrs.Pyari Bai is a landlord and Mrs.R.Susila was a tenant. The only point urged before the trial Court was that R.Susila, without the written consent of the landlord, had sublet the property to the 2nd respondent.

4. The Courts below have come to a conclusion that the factum of subletting has been proved from the evidence of R.W.1 and R.W.2. In addition, the Courts below have returned a finding that the partnership deed marked under Exs.R2 to R7 shows that the 1st petitioner/tenant had parted the possession of the demised premises to the 2nd petitioner. The parting of possession is without the Written consent of the landlord. By the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, if the written consent is not obtained for the purpose of subletting or if there is no authorisation permitting the subletting, it invites wrath of Section 10(2)(ii)(a) of the Act.



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5. I heard Mr.K.G.Vasudevan, the learned counsel appearing for the petitioners, tenants and Mr.A.K.Raghavalu, the learned counsel appearing for the respondents, landlords. I have carefully gone through the records.

6. Mr.K.G.Vasudevan, would submit that though there is no written consent for the purpose of subletting, the very fact that the landlord was in occupation of a premises opposite to the demised premises and the business was being carried on for a long time by the petitioners 1 & 2 in the demised premises deems permission. To that end, he would rely upon the judgment of the Supreme Court in ***A.S.Sulochana vs. C.Dharmalingam, AIR 1987 SCC 242.***

7. Mr.A.K.Raghavalu, would submit that as required by the Act, written consent is necessary and oral consent or acquiescence is not a defence in a proceeding for eviction on the ground of sub-tenancy.



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8. A perusal of the record shows that the 1st petitioner is the tenant.

Without the permission of the landlord, she had parted possession and handed over it to the 2nd petitioner. As per the Tamil Nadu Buildings (Lease and Rent Control) Act, it demands that such sub-tenancy to be saved from eviction proceedings, there must be a written consent. In this particular case, there is no written consent from the landlord. Therefore, the provisions of the statute stands satisfied. Apart from that, the Courts below have concurrently found that the sub-tenancy has been proved. Sitting under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, I cannot re-appreciate the evidence in the matter, unless and until the same is perverse or arbitrary. A reading of the judgment in the records does not lead me to the conclusion that it is perverse. Therefore, the finding of the sub-tenancy is confirmed.

9. Now I have to turn to the next argument of Mr.K.G.Vasudevan that the judgment in *A.S.Sulochana vs. C.Dharmalingam*, AIR 1987 SCC 242 comes to his rescue. A careful perusal of the facts in the



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aforesaid judgment would show that the appellant before the Supreme Court and the respondent were the legal representatives of the original landlord and the original tenant. The Supreme Court was pleased to allow the appeal on finding that as long as the original landlord and the original tenant were alive, no proceedings were initiated for eviction on the ground of sub-tenancy. The Court had drawn the conclusion that the original landlord should have granted permission for the sub-tenancy. It is in those peculiar circumstances, the judgment has come about. Apart from this, I am of the view that when the legislature have clearly stated that the written consent is necessary and no written consent has been produced before the Court, consequences of the Act must follow.

10. On the ground that the landlord was residing opposite to the demised premises and therefore, should have had knowledge of the sub-tenancy also does not appeal to me. Acquiescence is a principle in equity and not when the black letter law is clear. As I have already pointed out, the law requires a written consent and a written consent not



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being available, consequences should follow. Acquiescence cannot be a defence. In any event, in order to acquiescence to apply, the tenant must prove that the landlord was aware of the secretive agreement between the petitioners 1 & 2 and still kept quiet.

11. By the very nature of the things, the sub-tenancy is a secretive arrangement between the chief tenant and the sub-tenant. Therefore, unless and until there is positive proof that the secretive arrangement was made known to the landlord, I cannot come to a conclusion that he had knowledge of the same by the mere fact that he was residing in the opposite premises. Both the points fail. I have no other option to confirm the order in R.C.A.No.394 of 2003 dated 21.12.2012 and that of R.C.O.P.No.850 of 1996 dated 06.02.2003.

12. At this stage, Mr.K.G.Vasudevan, requests that sufficient time be granted for the tenants to vacate and handover the possession. Since the petition has been pending from 1996, four months time can be



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granted to the tenant to vacate and handover the possession, it would be in the interest of justice. Time is granted subject to the petitioners filing an affidavit of undertaking that they shall not put any third party in possession and they shall clear all the arrears if any, with respect to the payment of rents. Time for filing the affidavit of undertaking is granted till 31.08.2023.

13. With the above directions, this Civil Revision Petition is dismissed. No costs.

24.08.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

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V.LAKSHMINARAYANAN,J.

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To

1. VII Judge, Court of Small Causes,
Chennai .

2.XVI Judge, Small Causes Court
Chennai.

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